



# Public Service Commission

## State of North Dakota

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## **TYPES OF AUCTION SALES AND LICENSE APPLICABILITY**

### **PLEASE READ CAREFULLY**

October 25, 2021

To: All Auctioneer and Auction Clerk Licensees

RE: Types of Auction Sales and License Applicability

Due to the restrictions imposed by the COVID-19 pandemic, many businesses have changed their operations and the auction community is no exception. This letter is intended to clear up any confusion pertaining to the Public Service Commission's (Commission) licensing and regulation of auctioneers and auction clerks.

An *internet auction* is defined as: "the selling or offering for sale either real or personal property at public auction exclusively via the internet." N.D.C.C. § 51-05.1-04(3) [emphasis added]

Furthermore, ". . . A person conducting, or employed by a person conducting, an internet auction is not an auctioneer or clerk within the meaning of this chapter." N.D.C.C. § 51-05.1-04(5) [emphasis added]

Based upon these sections of law, the Commission has determined the following:

1. An individual conducting an *internet auction* does not need to be licensed as an auctioneer or auction clerk and is not subject to the provisions of N.D.C.C. Chapter 51-05.1; and
2. An individual licensed as an auctioneer or auction clerk conducting an *internet auction* is not viewed as being engaged in the business of an auctioneer or auction clerk and is not subject to the provisions of N.D.C.C. Chapter 51-05.1.

The Commission understands there are multiple ways to host an auction sale. The most basic way to determine if the auctioneer or auction clerk is engaging in the business of a *licensed* auctioneer or auction clerk is to ask the following question:

- Does the auction sale provide for in-person bidding?
  - If yes, then the auction sale falls under the provisions of N.D.C.C. Chapter 51-05.1.
  - If no, then the auction sale does **NOT** fall under the provisions of N.D.C.C. Chapter 51-05.1.

Individuals engaged in conducting an internet auction not subject to N.D.C.C. Chapter 51-05.1 should ensure their contracts and advertisements accurately reflect the services they are providing. Furthermore, surety bonds required for licensing, which are filed with the Commission, offer no protection for auction sales which fall outside the provisions of N.D.C.C. Chapter 51-05.1. The Commission discourages identifying an auctioneer or auction clerk license for activities involving an internet auction, as it could mislead people into believing there is surety bond coverage.

Please Note: Even if the auction sale does not fall under the Commission's jurisdiction, a licensed auctioneer or auction clerk is still held to the following licensing standard: "licenses may be granted only to persons who bear a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or a clerk." N.D.C.C. § 51-05.1-02

It is very important that you understand the difference between conducting an auction as a licensed auctioneer/clerk and conducting an auction that falls outside of the scope of your license.